

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NIGEL F.,

Plaintiff,

v.

5:21-CV-0517
(ML)

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

OLINSKY LAW GROUP
Counsel for the Plaintiff
250 South Clinton Street - Suite 210
Syracuse, New York 13202

CHRISTOPHER MILLIMAN, ESQ.

SOCIAL SECURITY ADMINISTRATION
Counsel for the Defendant
J.F.K. Federal Building, Room 625
15 New Sudbury Street
Boston, Massachusetts 02203

MICHAEL HENRY, ESQ.
Special Assistant U.S. Attorney

MIROSLAV LOVRIC, United States Magistrate Judge

ORDER

Currently pending before the Court in this action, in which Plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. § 405(g), are cross-motions for judgment on the pleadings.¹ Oral argument was heard

¹ This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

in connection with those motions on August 9, 2022, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination was supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by Plaintiff in this appeal.

After due deliberation, and based upon the Court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is

ORDERED as follows:

- 1) Plaintiff's motion for judgment on the pleadings (Dkt. No. 13) is DENIED.
- 2) Defendant's motion for judgment on the pleadings (Dkt. No. 14) is GRANTED.
- 3) The Commissioner's decision denying Plaintiff Social Security benefits is AFFIRMED.
- 4) Plaintiff's Complaint (Dkt. No. 1) is DISMISSED.
- 5) The Clerk of Court is respectfully directed to enter judgment, based upon this determination, DISMISSING Plaintiff's Complaint in its entirety and closing this case.

Dated: August 11, 2022
Binghamton, New York

A handwritten signature in black ink, reading "Miroslav Lovric", written over a horizontal line.

Miroslav Lovric
United States Magistrate Judge
Northern District of New York

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

F

vs.

5:21-CV-0517

COMMISSIONER OF SOCIAL SECURITY

DECISION AND ORDER

August 9, 2022

The HONORABLE MIROSLAV LOVRIC,
DISTRICT MAGISTRATE JUDGE

A P P E A R A N C E S

For Plaintiff: CHRISTOPHER MILLIMAN, ESQ.

For Defendant: MICHAEL HENRY, ESQ.

*Ruth I. Lynch, RPR, RMR, NYSRCR
Official United States Court Reporter
Binghamton, New York 13901*

1 THE COURT: All right. Well, the Court begins its
2 decision as follows. First, plaintiff has commenced this
3 proceeding pursuant to 42 United States Code Section 405(g)
4 to challenge the adverse determination by the Commissioner
5 of Social Security finding that he was not disabled at the
6 relevant times and therefore ineligible for the benefits
7 that he sought.

8 By way of background, the Court notes as follows:
9 Plaintiff was born in 1977. He is currently 44 years of
10 age. He was approximately 41 years old at the alleged onset
11 of his disability on October 4, 2018.

12 Plaintiff has a minor child who does not live
13 full-time with him.

14 Plaintiff is approximately 6 feet zero inches tall
15 and weighs approximately 375 pounds.

16 Plaintiff has a high school education and is able
17 to communicate in English.

18 Plaintiff suffers from asthma, morbid obesity,
19 anxiety, depression, bipolar disorder, and insomnia.

20 Procedurally the Court notes as follows as it
21 relates to this matter. Plaintiff applied for Title II
22 benefits on December 4, 2018, alleging an onset date of
23 October 4th, 2018. Administrative Law Judge David Romeo
24 conducted a hearing on May 6, 2020 to address plaintiff's
25 application for benefits. ALJ Romeo issued an unfavorable

1 decision on May 13th of 2020. That became a final
2 determination of the Agency on March 2nd, 2021, when the
3 Social Security Administration Appeals Council denied
4 plaintiff's application for review.

5 This action was commenced on May 5th of 2021, and
6 it is timely.

7 In his decision ALJ Romeo applied the familiar
8 five-step test for determining disability. At step one, he
9 concluded that plaintiff had not engaged in substantial
10 gainful activity since October 4 of 2018, the alleged onset
11 date.

12 At step two, the ALJ concluded that plaintiff
13 suffers from severe impairments that impose more than
14 minimal limitations on his ability to perform basic work
15 activities. Specifically the ALJ found the severe
16 impairments being asthma, morbid obesity, anxiety,
17 depression, and bipolar disorder. The ALJ also found that
18 he had, that being that the plaintiff had nonsevere
19 impairments of hypertension, hyperlipidemia, sleep apnea,
20 and diabetes.

21 At step three, ALJ Romeo concluded that
22 plaintiff's conditions do not meet or medically equal any of
23 the listed presumptively disabling conditions set forth in
24 the Commissioner's regulations. And the ALJ focused on the
25 following listings: 3.02, dealing with chronic respiratory

1 disorders; 3.03, dealing with asthma; and 3.00, dealing with
2 respiratory impairments; additionally 12.04, dealing with
3 depressive, bipolar, and related disorders; and then,
4 lastly, with listing 12.06, dealing with anxiety and
5 obsessive compulsive disorders. The ALJ considered his
6 obesity and its possible effects on plaintiff's ability to
7 work and perform activities of daily living pursuant to
8 SSR 19-2p.

9 The ALJ concluded that plaintiff retains the
10 residual functional capacity to perform light work as
11 defined in 20 CFR 404.1567(b), that's B as in boy, except
12 that he has the following additional limitations. The ALJ
13 indicated that the following additional limitations apply.
14 Plaintiff cannot tolerate concentrated exposure to
15 respiratory irritants. He can occasionally stoop, crouch,
16 crawl, kneel, balance, climb ramps, and climb stairs.
17 Plaintiff cannot climb ropes, ladders, or scaffolds. And
18 plaintiff should not be exposed to high unprotected places
19 or moving mechanical parts of equipment. Plaintiff can
20 maintain attention and concentration for two-hour segments
21 before and after the normal morning -- let me just read that
22 again; before the -- before and after the normal morning
23 lunch and afternoon workplace breaks. Plaintiff can
24 tolerate occasional interaction with coworkers, supervisors,
25 and the public. The ALJ also noted that plaintiff can

1 tolerate occasional changes in the work setting. He can
2 tolerate a low level of work pressure, defined as work not
3 requiring multitasking, very detailed job tasks, significant
4 independent judgment, very short deadlines, or teamwork in
5 completing job tasks.

6 At step four, the ALJ concluded that plaintiff
7 could not perform his past relevant work as a teller, as a
8 financial services sales representative, as an electronic
9 parts sales representative, and as a sales clerk.

10 At step five, the ALJ concluded that considering
11 plaintiff's age, education, work, work experience, and RFC
12 that there are jobs that exist in significant numbers in the
13 national economy that plaintiff can perform. More
14 specifically, based on the testimony of the vocational
15 expert the ALJ concluded that plaintiff could perform the
16 requirements of representative occupations such as a marker,
17 an office helper, and a routing clerk.

18 Now, as the parties know, this Court's functional
19 role in this case is limited and extremely deferential. I
20 must determine whether correct legal principles were applied
21 and whether the determination is supported by substantial
22 evidence defined as such relevant evidence as a reasonable
23 mind might find -- would find sufficient to support a
24 conclusion. As the Second Circuit has noted in the case of
25 *Brault V. Social Security Administration Commissioner*,

1 that's found at 683 F.3d 443, a 2012 case, and in that case
2 the Second Circuit noted the standard is demanding, more so
3 than the clearly erroneous standard. The Second Circuit
4 noted in *Brault* that once there is a finding of fact, that
5 fact can be rejected only if a reasonable fact-finder would
6 have to conclude otherwise.

7 Now, in this case the plaintiff raises one
8 contention. Plaintiff argues that the ALJ's RFC with
9 respect to the mental limitations is not supported by
10 substantial evidence because the ALJ failed to properly
11 weigh the opinions from treating psychiatric nurse
12 practitioner Eileen Cooper, which was cosigned by
13 supervising psychiatrist Dr. David K. Frey, or consultative
14 examiner Ann Grassl.

15 The Court provides the following analysis and
16 conclusions based upon the record.

17 For the reasons stated in defendant's brief, I
18 find that the ALJ did properly weigh the opinions of Nurse
19 Cooper, cosigned by Dr. Frey, and consultative examiner
20 being Dr. Grassl. I add the following to supplement but not
21 to supplant those reasons as stated by the defendant in
22 their brief as follows.

23 ALJ Romeo's appraisal of the evidence far
24 surpasses the low bar for substantial evidence.

25 Although Nurse Cooper opined that plaintiff would

1 be off task more than 20 percent of the time and miss more
2 than 4 days of work per month, the ALJ permissibly found
3 that opinion to be speculative. Nurse Cooper's treatment
4 notes indicate that plaintiff was doing well on medication,
5 traveling, beginning to do romantic relationships, and
6 working full-time in insurance sales.

7 Additionally, the ALJ reasonably inferred from the
8 mental status findings of plaintiff's primary care
9 clinicians -- which stated that plaintiff exhibited no
10 pertinent neurological findings, fair hygiene, good eye
11 contact, clear speech, psychomotor activity within normal
12 limits, a fine mood, a full affect, no perceptual
13 disturbances, no delusions, linear and logical thought
14 process, thought content that was within normal limits, fair
15 insight, fair judgment, a cooperative attitude toward the
16 examiner, fair concentration, fair attention span, intact
17 cognition, and denial of suicidal and homicidal ideations --
18 that plaintiff was not showing this -- I should preface the
19 ALJ's inferences from these observations indicated that
20 plaintiff was not showing any applicable signs of mental
21 dysfunction. Moreover, the ALJ relied on the mental health
22 specialists, Dr. Grassl and Nurse Cooper, who reported fair
23 to normal mental status findings between November 2018 and
24 January of 2019.

25 Additionally, Dr. Grassl did not explain why she

1 assessed marked limitations in concentration and pace
2 despite her examination revealing that plaintiff's attention
3 and concentration were intact and he had no difficulty
4 completing tasks. Further, Dr. Grassl's assessment of
5 marked difficulty regulating his emotions and behavior was
6 not supported by observations that plaintiff was polite and
7 cooperative and plaintiff's denial of anxiety, depression,
8 and panic attacks.

9 While there may be contrary evidence in the
10 record, I find that the evidence on which the ALJ relied is
11 not insubstantial. And I want to refer -- I want to state
12 that again. I find that the evidence on which the ALJ
13 relied is not insubstantial in light of the record as a
14 whole. The ALJ properly drew inferences from the evidence
15 in the record and concluded that plaintiff could tolerate a
16 range of unskilled low stress jobs requiring limited social
17 interaction.

18 Based on all of this, and as a result of the
19 analysis, plaintiff's motion for judgment on the pleadings
20 is denied. Defendant's motion for pleadings on the judge --
21 defendant's motion for judgment on the pleadings is granted.
22 Plaintiff's complaint is dismissed. And the Commissioner's
23 decision denying plaintiff benefits is affirmed.

24 This constitutes the decision of this Court.

25 - - - - -

CERTIFICATE OF OFFICIAL REPORTER

I, RUTH I. LYNCH, RPR, RMR, NYS Realtime Certified Reporter, Federal Official Court Reporter, in and for the United States District Court for the Northern District of New York, DO HEREBY CERTIFY that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

/s/ Ruth I. Lynch

RUTH I. LYNCH, RPR, RMR, NYSRCR
Official U.S. Court Reporter